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12 **UNITED STATES DISTRICT COURT**
13 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
14 **SAN FRANCISCO DIVISION**

16 SURGICAL INSTRUMENT SERVICE
17 COMPANY, INC.,

18 Plaintiff/
Counterclaim-Defendant

19 vs.

20 INTUITIVE SURGICAL, INC.,

21 Defendant/
Counterclaimant.

Case No.: 3:21-cv-03496-AMO-LB

INTUITIVE SURGICAL, INC.'S RESPONSE
TO THE COURT'S SUMMARY JUDGMENT
EVIDENTIARY CLARITY REQUESTS

Judge: The Honorable Araceli Martínez-Olguín

1 Intuitive Surgical, Inc., submits the following in response to the Court's Evidentiary Clarity
 2 requests at the motions hearing held September 7, 2023. Page citations are to the ECF pagination.
 3 Publicly filed docket citations with no page citations reflect that a document was filed under seal in its
 4 entirety.

5 **REQUEST: FDA messages to third-party service providers, including Rebotix, SIS, and
 6 any others.**

Exhibit	Description	Publicly Filed Docket Entry	Sealed Docket Entry
Cahoy Ex. 10	Expert Report of Christy Foreman (submitted in this case)	ECF No. 137-13 at 38–52 (¶¶ 102–142); 54–57 (¶¶ 149–154, 157); 72–79 (¶¶ 217–235); 80–82 (¶¶ 242–245), and record materials cited and quoted therein	ECF No. 138-3 at 38–52 (¶¶ 102–142); 54–57 (¶¶ 149–154, 157); 72–79 (¶¶ 217–235); 80–82 (¶¶ 242–245), and record materials cited and quoted therein
Cahoy Ex. 22	Emails re "Rebotix AI Letter Conference Call Follow-Up" (REBOTIX077729 – REBOTIX077734)	ECF No. 137-25	ECF No. 138-11 at 6
Cahoy Ex. 23	Email from FDA to Ryan Burke (REBOTIX171058)	ECF No. 137-26	ECF No. 138-12 at 2
Cahoy Ex. 31	Emails between BPI Medical, Rebotix, and FDA re EndoWrists (BPI000331 – BPI000337)	ECF No. 137-34	ECF No. 138-18 at 5–8
Cahoy Ex. 32	FDA Deficiency Letter re Rebotix "Remanufactured EndoWrists" (REBOTIX171030 – REBOTIX171057)	ECF No. 137-35	ECF No. 138-19 at 2–29
Cahoy Ex. 34	Emails re "Request for More Information on Rebotix Repair Repairing/Servicing Activities" (REBOTIX146948 – REBOTIX146955)	ECF No. 137-36	ECF No. 138-20 at 2; 6–9

Exhibit	Description	Publicly Filed Docket Entry	Sealed Docket Entry
Cahoy Ex. 35	FDA Letter No. CPT2000126 to Rebotix (REBOTIX175417 – REBOTIX175418)	ECF No. 137-37	ECF No. 138-21 at 2–3
Cahoy Ex. 37	Emails re “Rebotix Repair, LLC re Document Number CPT200126” (REBOTIX175839 – REBOTIX175843)	ECF No. 137-39	ECF No. 138-23 at 2–6
Cahoy Ex. 38	Emails re “Restore Robotics -- Request for More Information (Restore-00001248 – Restore-00001256)	ECF No. 137-40	ECF No. 138-24 at 2–10
Cahoy Ex. 41	FDA Deficiency Letter re Iconocare 8mm Monopolar Curved Scissors (AHP000527 – AHP000537)	ECF No. 137-43	ECF No. 138-27 at 2–12
Cahoy Ex. 42	Emails re Iconocare Deficiency Notice (Restore-00086093 – Restore-00086120)	ECF No. 137-44	ECF No. 138-28 at 2–7; 9–26; 28–29
Cahoy Ex. 64	Emails re “Rebotix Repair, LLC re Document Number CPT200126” (REBOTIX175710 – REBOTIX175730)	ECF No. 137-47 at 2–10; 12–21	N/A

REQUEST: Statement from Intuitive's experts that third-party EndoWrist Modifications constituted remanufacturing.

Exhibit	Description	Publicly Filed Docket Entry	Sealed Docket Entry
Cahoy Ex. 10	Expert Report of Christy Foreman (submitted in this case)	ECF No. 137-13 at 10–11 (¶ 16(b)); 52–57 (¶¶ 143–154); 60–66 (¶¶ 165–193); 68–72 (¶¶ 200–216); 89 (¶ 266); 90–91 (¶ 270)	ECF No. 138-3 at 10–11 (¶ 16(b)); 52–57 (¶¶ 143–154); 60–66 (¶¶ 165–193); 68–72 (¶¶ 200–216); 89 (¶ 266); 90–91 (¶ 270)

REQUEST: Statements from Intuitive and its experts stating that EndoWrist use limits are appropriate.

Exhibit	Description	Publicly Filed Docket Entry	Sealed Docket Entry
Rosa Decl.	Declaration of David Rosa	ECF No. 137-2 at 5–9 (¶¶ 22–35); 11–12 (¶ 45)	N/A
Cahoy Ex. 5	Excerpts of the Deposition of Margaret Marie Nixon (Oct. 7, 2022) (taken in this case)	ECF No. 137-10 at 5–8	N/A
Cahoy Ex. 10	Expert Report of Christy Foreman (submitted in this case)	ECF No. 137-13 at 10–12 (¶ 16(b), (d)); 31–38 (¶¶ 75–101); 79–82 (¶¶ 236–245), and record materials cited and quoted therein	ECF No. 138-3 at 10–12 (¶ 16(b), (d)); 31–38 (¶¶ 75–101); 79–82 (¶¶ 236–245), and record materials cited and quoted therein
Cahoy Ex. 66	Excerpts of the Deposition of Disha Peswani (Oct. 6, 2022) (taken in this case)	ECF No. 137-49 at 3–12	N/A
Cahoy Ex. 73	Excerpts of the Deposition of Nickola “Nicky” Goodson, 30(b)(6) designee for Intuitive (Oct. 27, 2022) (taken in this case)	ECF No. 137-52 at 4–6	N/A
Cahoy Ex. 75	Expert Report of Dr. Robert D. Howe (submitted in this case)	ECF No. 137-54 at 11–12 (¶¶ 16–17); 37–44 (¶¶ 62–74), and record materials cited and quoted therein	ECF No. 136-2 at 11–12 (¶¶ 16–17); 37–44 (¶¶ 62–74), and record materials cited and quoted therein ECF No. 138-31 at 11–12 (¶¶ 16–17); 37–44 (¶¶ 62–74), and record materials cited and quoted therein
Smith Ex. 1	Expert Antitrust Merits Rebuttal Report of Dr. Loren K. Smith (submitted in this case)	ECF No. 137-6 at 25–27 (¶¶ 32–33); 95–96 (¶ 144); 100–102 (¶¶ 151–152), and record materials cited and quoted therein	ECF No. 138-45 at 25–27 (¶¶ 32–33); 95–96 (¶ 144); 100–102 (¶¶ 151–152), and record materials cited and quoted therein

1 **REQUEST: Record evidence of Iconocare's 510(k) clearance.**

2 Exhibit	3 Description	4 Publicly Filed Docket Entry	5 Sealed Docket Entry
6 Cahoy Ex. 10	7 Expert Report of 8 Christy Foreman 9 submitted in this case)	10 ECF No. 137-13 at 41–51 11 (¶¶ 111–38); 56 (¶¶ 152–53), 12 and record materials cited 13 and quoted therein	14 ECF No. 138-3 at 41–51 15 (¶¶ 111–38); 56 (¶¶ 152–53), and record materials cited and quoted therein
16 Cahoy Ex. 75	17 Expert Report of 18 Dr. Robert D. Howe 19 submitted in this case)	20 ECF No. 137-54 at 75–76 21 (¶¶ 138–140), and record 22 materials cited and quoted 23 therein	24 ECF No. 136-2 at 75–76 25 (¶¶ 138–140), and record 26 materials cited and quoted 27 therein 28 ECF No. 138-31 at 75–76 29 (¶¶ 138–140), and record 30 materials cited and quoted 31 therein
32 Cahoy Ex. 40	33 Iconocare 510(k) 34 Clearance (SIS357813 35 – SIS357818)	36 ECF No. 137-42	37 ECF No. 138-26

12 DATED: September 11, 2023

13 By: /s/ Kathryn E. Cahoy
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